IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 209

RAILROAD TRANSFER SERVICE, INC.,
A Delaware Corporation,
Petitioner,

vs.

THE CITY OF CHICAGO,
A Municipal Corporation, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF CHICAGO TERMINAL RAILROADS AS AMICUS CURIAE IN SUPPORT OF PETITIONER.

The railroads named below[1] present this brief as *amicus curiae* in support of petitioner.

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1. The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Chicago & Eastern Illinois Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago, Rock Island and Pacific Railroad Company; Chicago South Shore and South Bend Railroad; Erie-Lackawanna Railroad Company; Canadian National Railway Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Monon Railroad; The New York Central Railroad Company; Norfolk and Western Railway Company; and The Pennsylvania Railroad Company.

INTEREST OF THE RAILROADS

The railroads named are those on whose behalf petitioner is transferring passengers between railroad stations in Chicago, pursuant to the terms of a written contract between the railroads and petitioner.

The railroads wish to make it entirely clear that they support petitioner and have the same interest as petitioner in reversing the judgment of the Court of Appeals. But the railroads have their special interests in aspects of this litigation that may not adequately be presented by the parties.

ARGUMENT

The railroads support the position of petitioner in all respects. Obviously, the interests of the railroads and of petitioner in the case at bar are as one. Under § 202(c) of the Interstate Commerce Act, 49 U.S.C. § 302(c), petitioner is the *alter ego* of the railroads in performing the interstation transfer service.

However, the interests of the railroads in this litigation are more extensive than the immediate concerns of petitioner. The need of the *railroads* for a dependable transfer service under their own control, free from local interference, was a principal ground for the Court's decision that freed petitioner from the shackles that would have been imposed upon it by the Chicago ordinance held invalid in *Chicago* v. *Atchison, Topeka & Santa Fe Railway Company*, 357 U.S. 77, 87-88 (1958).

A crucial issue here is the conflict of § 202(c) with a local regulatory ordinance. The railroads are engaged in extensive § 202(c) operations throughout the United States, largely in freight service. An affirmance of the judgment of the Court of Appeals could have adverse

effects upon that service extending nationwide; the result would not simply be confined to interstation passenger transfer in Chicago.

In *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60 (1945), the Court held that § 202(c) is an expression of the National Transportation Policy of Congress of a means of preserving the "inherent advantages" of railroad transportation. The Court said in part:

> "When Congress directed that the act should be administered to preserve the inherent advantages of each mode of transportation, it is abundantly clear that it was not intended to bar railroads from the operation of off-the-rail motor vehicles. . . . Section 202(c)(1) of the 1940 Interstate Commerce Act, part II, as amended, withdraws railroad operation of motor carriers in terminal areas from the scope of motor carrier regulation and leaves such operations under part I." (pp. 66-67.) (Footnote quoting § 202(c) omitted.)

In the performance by railroads of all-rail trailer-on-flat-car service, the trailers are handled in pickup, transfer, and delivery service in terminal areas by the railroads or their agents under the terms of § 202(c). The great importance to the railroads of this form of terminal area operation was explained by the Interstate Commerce Commission in *Movement of Highway Trailers by Rail*, 293 I.C.C. 93, 101-104 (1954). As there shown, § 202(c) is the indispensable foundation of all-rail TOFC service. This form of § 202(c) operation is engaged in by the railroads, by themselves or their agents, in every shipping area throughout the United States. It is of paramount importance to the railroads that this service be kept free from unlawful local regulatory obstructions.

The importance to commerce of terminal area transpor-

tation was demonstrated in *Cartage, Rail to Steamship Lines at New York*, 269 I.C.C. 199 (1947), where the Interstate Commerce Commission held that it had authority to compel railroads to perform § 202(c) motor service between terminals in the New York area.

In *Atchison*, 357 U.S. at 86-88, the Court emphasized the importance of § 202(c) to the railroads. Under review there was paragraph (2) of that section, which authorizes the railroads to perform the interstation transfer service through the medium of a person acting "as agent or under a contractual arrangement." As the Court pointed out there, all of the rights the railroads may themselves exercise under paragraph (1) may be delegated by the railroads under paragraph (2) to their agent or contractor. As the Court said:

> "We believe the Act authorizes the railroads to engage in this transfer operation themselves or to select such agents as they see fit for that purpose without leave from local authorities." (p. 87)

CONCLUSION

It is of great importance to the Chicago Terminal Railroads and to the railroad industry of the Nation that the contested provisions of the Chicago ordinance be held invalid and that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

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